

## **FINAL STATEMENT OF REASONS/ PLAIN ENGLISH OVERVIEW/NON-CONTROLLING SUMMARY**

### **Adoption of Property Tax Rules 140, 140.1, 140.2, and 143 Welfare Exemption**

#### **Update**

A technical change has been made to the text of Rule 140 to correct an erroneous cross-reference in subdivision (a)(3) as it was set forth in the Notice. As noticed, Rule 140, subdivision (a)(3) made an erroneous cross-reference to “subdivision (c) below” to define rent levels. Subdivision (c), however, does not relate to rents, but rather, tax credits and government financing. To correct this erroneous cross-reference, the text of Rule 140, subdivision (a)(3) has been revised to delete the cross-reference to subdivision (c), and replace it with rent levels “that do not exceed those prescribed by section 50053 of the Health and Safety Code.” This language tracks that in Revenue and Taxation Code section 214, subdivision (g)(2)(A), the section of the Revenue and Taxation code this rule will implement.

#### **Specific Purpose**

The purpose of the proposed rules is to implement and make specific the requirements for: (1) low-income housing properties to qualify for the welfare exemption; (2) the managing general partner of a limited partnership for the limited partnership to qualify for a supplemental clearance certificate for the purpose of claiming the welfare exemption for property used for low-income housing; and (3) the irrevocable dedication clause and dissolution clause set forth in organizational documents to qualify for the welfare exemption.

#### **Factual Basis**

Revenue and Taxation Code<sup>1</sup> section 214 is the primary statute implementing the authority granted to the Legislature under sections 4, subdivision (b), and 5 of article XIII of the California Constitution to exempt from property taxation property owned by specified organizations and used exclusively for religious, hospital, scientific or charitable purposes. This exemption from property taxation is known as the welfare exemption.

#### **Rules 140, 140.1 and 140.2**

Subdivision (g) of section 214 sets forth the requirements, which must be met in order to qualify for the welfare exemption for low-income housing properties. Under section 214, subdivision (g)(1)(A) and (B), property used exclusively for rental housing and related facilities owned and operated by religious, hospital, scientific, or charitable

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<sup>1</sup> Unless otherwise specified, all statutory references are to the Revenue and Taxation Code.

funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company meeting all of the requirements for the welfare exemption under section 214, or by qualifying veterans' organizations described in section 215.1, are entitled to the welfare exemption if: (1) the owner of the property receives low-income housing tax credits or government financing for the particular property; and (2) the property is subject to a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located. Additionally, section 214, subdivision (g)(1)(C) provides an alternative basis to qualify for the welfare exemption for low-income housing properties owned by qualifying nonprofit organizations, other than properties owned by limited partnerships with a nonprofit managing general partner, if 90 percent or more of the occupants of the property are lower income households whose rent do not exceed the rent prescribed by section 50053 of the Health and Safety Code; however, the total exemption amount allowed statewide under this subdivision to a taxpayer with respect to a single or multiple properties for any fiscal year may not exceed \$20,000 in tax.

The Board of Equalization proposes the adoption of Rules 140, 140.1 and 140.2 to implement and make specific the requirements to qualify for the welfare exemption under section 214, subdivision (g).

### **Rule 143**

Section 254.5 provides that a county assessor may not approve a welfare exemption claim unless the claimant has been issued an organizational clearance certificate by the Board as provided in section 254.6. Among other requirements, in order to qualify for an organizational clearance certificate from the Board, the claimant's formation documents, such as the articles of incorporation, must contain both an irrevocable dedication clause and a dissolution clause. Section 214, subdivision (a)(6) provides that, in order for property owned and operated by nonprofit organizations to qualify for the welfare exemption, property owned by a nonprofit organization must be irrevocably dedicated to a qualifying purpose, and upon liquidation, dissolution, or abandonment of the nonprofit organization, the property will not inure to the benefit of any private person except another qualifying nonprofit organization. Section 214.01 specifically provides that the nonprofit organization's formation documents must contain an irrevocable dedication clause.

The Board of Equalization proposes the adoption of Rule 143 to clarify and make specific the requirements for a qualifying irrevocable dedication clause and dissolution clause.

### **Proposed Rule 140 Welfare Exemption Requirements for Low-Income Housing Properties**

Proposed Rule 140 will define and make specific the terms "regulatory agreement," "deed restriction," "federal low -income housing tax credits," "government

financing,” “lower income households,” and “other legal document” as used in Revenue and Taxation Code section 214, subdivision (g), providing for the welfare exemption for low-income housing properties.

**Proposed Rule 140.1 Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties**

Proposed Rule 140.1 will define the term “managing general partner” of a limited partnership and implement and make specific the requirements that the managing general partner must meet in order for the low-income housing property, owned and operated by the limited partnership, to qualify for the welfare exemption.

**Proposed Rule 140.2 Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties**

Proposed Rule 140.2 will implement and make specific the requirements for a supplemental clearance certificate that the limited partnership, in which the managing general partner is a qualifying nonprofit organization, must meet for each low-income housing property for which it intends to claim the welfare exemption under section 214, subdivision (g).

**Proposed Rule 143 Requirement for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption**

Rule 143 is proposed to clarify and make specific the requirement under the welfare exemption, generally, that the property is irrevocably dedicated to religious, charitable, scientific or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner, will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes. Proposed Rule 143 will define the terms: “dissolution clause,” “irrevocable dedication clause,” “organizational document,” “qualifying organization,” and “qualifying purpose.” Proposed Rule 143 will also provide examples of acceptable irrevocable dedication clauses, and examples of acceptable dissolution clauses.

On December 13, 2005, the Board of Equalization approved publication of the proposed rules, and scheduled a public hearing for March 28, 2006. A notice of proposed regulatory action and public hearing was mailed to interested parties on January 27, 2006, in compliance with section 11346.4, subdivisions (a)(1) through (a)(4). The Board provided notice of the technical correction to proposed Rule 140 on the Board’s Web site on March 23, 2006.

## **Local Mandate Determination**

The State Board of Equalization has determined that the rules do not impose a mandate on local agencies or school districts.

## **Response to Public Comment**

On March 28, 2006, the State Board of Equalization held a public hearing on the proposed adoption of Rules 140, 140.1, 140.2 and 143. Following the hearing, the Board approved the technical correction to Rule 140, subdivision (a)(3), and adopted Rules 140, 140.1, 140.2 and 143.

## **Written Comments**

Rick Auerbach, President, California Assessor's Association and Assessor of Los Angeles County

Mr. Auerbach, as President of the California Assessor's Association, submitted a letter dated February 8, 2006, on behalf of the association in support of the proposed rules.

Staff Response: Mr. Auerbach's letter in support of adoption is appreciated.

Lisa A. Runquist and Patrick Sternal, Runquist & Associates

By letter dated March 21, 2006, Ms. Runquist and Mr. Sternal expressed concern that Rule 143, as it relates to the irrevocable dedication clause for religious schools claiming the welfare exemption, the proposed rule may be placing a greater restriction than the statute, section 214.

Staff Response:

Under Rule 143, there will be no change in the Board of Equalization's Legal Department's interpretation of the irrevocable dedication and dissolution requirements under the welfare exemption statutes. The irrevocable dedication language Runquist & Associates propose in their comment letter would be acceptable under Rule 143.

Stephen C. Ryan, Cox, Castle & Nicholson, LLP

Mr. Ryan submitted a letter dated March 23, 2006, in support of the proposed rules.

Staff Response: Mr. Ryan's letter in support of adoption is appreciated.

Jonathan B. Webb, Executive Director, Foundation for Social Resources, Inc.

Mr. Webb submitted a letter dated March 24, 2006, in support of the proposed rules.

Staff Response: Mr. Webb's letter in support of adoption is appreciated.

### **Oral Comments**

At the public hearing held on the proposed rules, all comments were in support of the proposed rules. Comments in support of adoption of the proposed rules were made by:

- Mr. Ken Stieger, Sacramento County Assessor and Vice President of the California Assessors' Association, representing the California Assessors' Association
- Mr. Lenny Goldberg, representing the California Tax Reform Association
- Mr. Jonathan Webb, Executive Director for the Foundation for Social Resources

Staff Response: These comments in support of adoption are appreciated.

### **Small Business Impact**

The State Board of Equalization has determined that the rules do not and will not have a significant adverse impact on small businesses.

### **Adverse Economic Impact on Private Persons/ Businesses Not Including Small Business**

No impact.

### **Federal Regulations**

There are no comparable federal regulations.

### **Alternatives Considered**

By its motion to adopt Rules 140, 140.1, 140.2 and 143, the Board determined that no alternative to these rules would be more effective in carrying out the purpose for which the rules are proposed or would be as effective and less burdensome to affected private persons than the adopted rules.